

# LABRADOR v CRIDLAND

Supreme Court (Summary Jurisdiction)

Flaxman, C.J.

22 February 1956.

*Landlord and tenant — recovery of possession — rent lawfully due not paid — meaning of “lawfully due”*

*Landlord and tenant — material date when deciding if rent due.*

The landlord sought an order for possession on the ground that rent lawfully due had not been paid. It was admitted that there had been a tender of the rent before the institution of the suit.

**Held:** (i) Rent is not lawfully due unless it can be recovered by process of law.

(ii) The material date is the date of institution of the proceedings and as the rent had been tendered before that date, even though after the due date, it was not then lawfully due.

**Note.** This case was decided under the Rent Restriction Ordinance, 1938 (No. 4 of 1938), which was repealed and replaced by the Landlord and Tenant (Miscellaneous Provisions) Ordinance, 1959 (No. 3 of 1959, Cap. 83, 1965 - 69 Ed.).

**Case referred to in the judgment.**

*Bird v Hildage*, [1948] 1 K.B. 91.

**Action**

This was an action for possession of a flat to which Part II of the Rent Restriction Ordinance applied.

J.E. Alcantara for the plaintiff.

**29 February 1956: The following judgment was read—**

In this case I am asked to make an order for recovery of possession of a flat at No. 13 Lynch's Lane on the grounds that rent lawfully due has not been paid. Notice to quit has been given to the tenant.

The court, if it considers it reasonable to do so, has power under the Rent Restriction Ordinance to make an order for recovery of possession of a dwellinghouse to which Part II of the Ordinance applies if (inter alia) any rent lawfully due from the tenant has not been paid. In view of the admission that there was a proper tender of the rental before the institution of this suit it is necessary first to consider whether any rent was "lawfully due" when these proceedings were commenced. The question of the interpretation of the words "any rent lawfully due from the tenant has not been paid" is considered in the case of *Bird v Hildage*<sup>1</sup>, where it was held that

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<sup>1</sup> [1948] 1 K.B. 91.

rent is not "lawfully due" unless it can be recovered by process of law. The judgment adds that the material time by reference to which a court has to decide whether "any rent lawfully due from the tenant has not been paid" is the date of the institution of the landlord's proceedings for possession. If therefore rent was lawfully tendered in this case even after due date, it is not at the time these proceedings were instituted "lawfully due" within the meaning of the wording of the Schedule. The condition for an order of possession is thus unfulfilled in this case and the landlord is not entitled to an order for possession.

*(The Chief Justice went on to consider, in the alternative, whether, on the facts, the making of an order would have been reasonable.)*